

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

EISHO LEO SUZUKI,

Appellant,

v.

ROXANNE LOUISE SUZUKI,

Respondent.

A153235

(Contra Costa County  
Super. Ct. No. MSD15-05769)

In the midst of a custody dispute, Roxanne Suzuki applied for a restraining order against her husband, Eisho, under the Domestic Violence Prevention Act (DVPA, Fam. Code, § 6200 et seq.).<sup>1</sup> Roxanne alleged that Eisho had physically and emotionally abused their children and had sexually assaulted and emotionally abused her. After a hearing, the trial court issued a restraining order against Eisho based on findings that he abused Roxanne by his actions at a swim meet, where he drunkenly pestered her to kiss him, and by using a mobile phone app to find her location when she was not at home. On appeal, Eisho argues there was insufficient evidence to support the restraining order. We disagree, and therefore we shall affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

Several months after Eisho filed a petition to dissolve his marriage to Roxanne, he and Roxanne separately sought orders from the family court regarding the custody of

---

<sup>1</sup> For clarity and brevity, we refer to the parties by first names. We intend no disrespect. All statutory references are to the Family Code.

their children. While custody issues, including a custody evaluation, were pending, Roxane applied for a Domestic Violence Restraining Order

The hearing on Roxanne’s petition was held on several days over the course of several months, and the court heard testimony from about a dozen witnesses. After counsel presented closing arguments, the court issued its ruling from the bench. The court explained it did not find that Eisho abused the children or sexually abused Roxanne. With respect to the other forms of abuse that Roxanne alleged Eisho had committed against her, the court relied primarily on the testimony of third parties “that don’t really have an ax to grind.” The court then said, “I found that there is enough to issue a restraining order, because even if it was nothing but that swimming-pool incident, that you were clearly, I mean, the description is it was out of control. You were drunk, you were irritating—it was described as extremely awkward by one of the witnesses. You were disturbing her peace. Okay?”

The trial court issued a restraining order that same day, to remain in effect for seven months, and Eisho timely appealed.<sup>2</sup> Roxanne did not file a respondent’s brief, and oral argument has been waived. Therefore we decide the appeal on the record and Eisho’s opening brief. (Cal. Rules of Court, rule 8.220(a)(2).)

## **DISCUSSION**

### **A. *Applicable Law***

The purpose of the DVPA is “to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.” (§ 6220.) Under the DVPA, the trial court is authorized to issue an order “to restrain any person for the purpose specified in Section 6220 if [evidence] shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.”

---

<sup>2</sup> The order expired before Eisho filed his opening brief on appeal. Although we could dismiss this appeal as moot (*Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 144), we exercise our discretion to reach the merits because of Eisho’s assertion that the order may have continuing collateral consequences for his employment opportunities.

(§ 6300, subd. (a).) “Abuse” includes “any behavior that has been or could be enjoined pursuant to section 6320” (§ 6203, subd. (a)(4)), and “is not limited to the actual infliction of physical injury or assault.” (§ 6203, subd. (b).)

Section 6320 by its terms authorizes the court to issue an order enjoining various types of conduct, including “harassing, telephoning . . . or disturbing the peace of the other party.” (§ 6320, subd. (a).) “Disturbing the peace of the other party” in this context has been interpreted to mean “conduct that destroys the mental or emotional calm of the other party.” (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497 (*Nadkarni*).)

“We review an order granting a protective order under the DVPA for abuse of discretion. (*Nadkarni, supra*, 173 Cal.App.4th at p. 1495.) In considering the evidence supporting such an order, ‘the reviewing court must apply the “substantial evidence standard of review,” meaning “ ‘whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted,’ supporting the trial court’s finding. [Citation.] ‘We must accept as true all evidence . . . tending to establish the correctness of the trial court’s findings . . . , resolving every conflict in favor of the judgment.’ ” [Citation.]’ (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1143.)” (*In re Marriage of Evilsizor and Sweeney* (2014) 237 Cal.App.4th 1416, 1424 (*Evilsizor*).)

#### B. *Analysis*

In finding that the “swimming-pool incident” constituted abuse, and therefore justified the issuance of a domestic violence restraining order, the trial court found that Eisho was drunk, his behavior was out of control and irritating, he created an awkward situation, and he disturbed Roxanne’s peace. The evidence before the trial court on the incident was as follows:

Sometime in the spring of 2016, one of the Suzuki children was competing in a swim meet. Jeanine Dias, a friend of the Suzukis, and one of the third parties on whose testimony the trial court specifically relied, was present and testified that Eisho arrived after the rest of the family, carrying a beer. He was “pushy” towards Roxanne, following her around and demanding that she pay attention to him. He said, “Kiss me, Roxanne”

about 10 times, and told the children, “Tell her to kiss me.” Dias reported that the children wanted Roxanne “to just do it,” which she did, “[v]ery quickly.” Dias said, “It was an awkward day.” After the meet, the Suzuki family went to a birthday party for Dias’s grandson at a restaurant. Dias testified that Eisho did not appear drunk at the swim meet, but seemed drunk at the party.

The child competing in the swim meet testified that Eisho arrived at the meet with a beer in his hand and one or two in his back pockets. He testified that Eisho caused a scene by telling Roxanne, “Kiss me now,” and then raising his voice. When they arrived at the restaurant for the party, Eisho got out of the car and threw a bottle on the ground, where it shattered.

Roxanne testified that Eisho arrived late at the swim meet with at least two beers, drank beer at the meet, and asked her to kiss him “a lot.” He was yelling, she and the children were embarrassed, and she tried to pacify him. She testified that Eisho acted very drunk at the party later that day, “being obnoxious,” and yelling and following her around. She said she tried to avoid him without making a scene.

Eisho testified that he only vaguely remembered the incident at the swim meet, and said that it was “just like any normal day.”

In issuing the restraining order, the trial court also referred to evidence about Eisho’s use of a mobile phone app to determine Roxanne’s whereabouts, but we need not consider that, because the testimony described above constitutes substantial evidence that Eisho harassed Roxanne and disturbed her emotional calm. It therefore supports the trial court’s finding that Eisho had engaged in conduct that could be enjoined under section 6320 and that justified the issuance of a restraining order under section 6300, subdivision (a). Accordingly, we conclude that Eisho has not demonstrated that the trial court abused its discretion in imposing the order.

Eisho argues that his conduct toward Roxanne was far less severe than the conduct that constituted abuse in *Nadkarni, supra*, 173 Cal.App.4th at pages 1498-1499, *Evilsizor, supra*, 237 Cal.App.4th at page 1420, or *Altafulla v. Ervin* (2015) 238

Cal.App.4th 571, 575-576. True, but that does not show that the trial court here abused its discretion, because those cases do not set a lower bound for abuse under section 6203.

Eisho also argues that the trial court applied the wrong legal standard by failing to consider whether Eisho disturbed Roxanne's peace as that concept is understood under the Family Code and instead applying what he characterizes as a "general common law understanding of 'disturbing the peace,' " which focuses on public disruption. The only support for Eisho's theory that the trial court employed the wrong standard is that the trial court described his conduct as "out of control," said Eisho was drunk and irritating, and noted that a witness described the situation as "awkward." The trial court's observations are not inconsistent with its explicit finding that Eisho disturbed Roxanne's peace. And in any event, the evidence supports a conclusion that by harassing and pursuing Roxanne at the swim meet and the following party, he engaged in conduct that justifies the imposition of a restraining order.

#### **DISPOSITION**

The October 18, 2017 restraining order is affirmed.

---

Miller, J.

We concur:

---

Richman, Acting P.J.

---

Stewart, J.

A153235, *Suzuki v. Suzuki*